

SERVICE DATE – MAY 10, 2013

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 991 (Sub-No. 1X)

YELLOWSTONE VALLEY RAILROAD, L.L.C.—DISCONTINUANCE OF LEASE AND
TRACKAGE RIGHTS OPERATIONS EXEMPTION—IN RICHLAND, SHERIDAN,
ROOSEVELT, AND DANIELS COUNTIES, MONT., AND MCKENZIE COUNTY, N.D.

Digest:¹ Yellowstone Valley Railroad, L.L.C. is permitted to discontinue its lease operations and overhead trackage rights over four sections of track owned by BNSF Railway Company.

Decided: May 8, 2013

By petition filed on February 11, 2013, Yellowstone Valley Railroad, L.L.C. (YVRR or Petitioner) seeks an exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. § 10903 to discontinue its lease operations over two rail lines owned by BNSF Railway Company (BNSF) between: (1) milepost 43.0, in Crane, Mont., and milepost 78.6, near Snowden, Mont.; and (2) milepost 0.93, near Bainville, Mont., and milepost 100.3, near Scobey, Mont. Additionally, YVRR seeks to discontinue its overhead trackage rights on two other BNSF rail lines between: (1) milepost 78.6, on the BNSF Sidney Subdivision near Snowden, and milepost 0.93, on the BSNF Scobey Subdivision, near Bainville; and (2) milepost 6.0, near Glendive, Mont., and milepost 0.0, at Glendive. Notice of the filing was served and published in the Federal Register on March 1, 2013 (78 Fed. Reg. 13,932). No comments were filed in response to the notice. We will grant the petition for exemption, subject to standard employee protective conditions.

BACKGROUND

YVRR leased the lines and acquired the overhead trackage rights from BNSF in 2005.² At that time, YVRR was known as Yellowstone Valley Railroad, Inc.

In 2011, YVRR received authority to discontinue service between milepost 6.0, near Glendive, and milepost 43.0, at Crane.³ For that reason, YVRR states that it no longer needs the

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² See Yellowstone Valley R.R.—Lease and Operation Exemption—BNSF Ry., FD 34737 (STB served Sept. 1, 2005).

overhead trackage rights south of milepost 6.0. Accordingly, YVRR seeks authority here to discontinue those rights, which run between milepost 6.0, near Glendive, and milepost 0.0, at Glendive.

YVRR seeks to discontinue operations over the leased lines so that BNSF can once again resume operations over those lines.⁴ According to YVRR, once it discontinues service over the leased lines, it will no longer have any need for the overhead trackage rights between milepost 78.6, on the BNSF Sidney Subdivision near Snowden, and milepost 0.93, on the BNSF Scobey Subdivision, near Bainville. When it discontinues operations over the BNSF tracks, YVRR states that it will convert its operations over its tracks in Dore, N.D., to common carrier transload and terminal switching operations.⁵

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 10903, a rail carrier may not discontinue operations without our prior approval. Under 49 U.S.C. § 10502, however, we must exempt a transaction or service from regulation when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

Detailed scrutiny under 49 U.S.C. § 10903 of Petitioner's proposal to discontinue service under the lease and the overhead trackage rights is not necessary to carry out the rail transportation policy here. By minimizing the administrative expense of the application process, an exemption would expedite regulatory actions and reduce regulatory barriers to exit from the industry, in accordance with 49 U.S.C. §§ 10101(2) and (7). Consistent with 49 U.S.C. §§ 10101(5) and (9), an exemption would also foster sound economic conditions in transportation and encourage efficient railroad management by quickly allowing BNSF to resume operations on these lines that it owns. Other aspects of the rail transportation policy will not be adversely affected.

(. . . continued)

³ See Yellowstone Valley R.R.—Discontinuance of Service Exemption—In Dawson and Richland Cntys., Mont., AB 991X (STB served June 28, 2011).

⁴ YVRR currently serves 23 customers on the leased lines. After YVRR discontinues its service, BNSF will resume providing service to these shippers.

⁵ YVRR asserts that it constructed these tracks as team tracks while leasing the lines from BNSF and that it did not need Board authority for this construction under 49 U.S.C. § 10906. To now perform common carrier operations, however, it would appear that YVRR would need Board authorization. It should either seek Board authorization for the operations or a Board decision (through a declaratory order proceeding or other appropriate formal means) finding that the activity does not require Board approval.

Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power.⁶ Although there are 23 shippers on the leased lines, all would receive service from BNSF once YVRR discontinues operations. No shipper has objected to the proposed discontinuance or change in operations. Nevertheless, to ensure that the 23 affected shippers are informed of our action, we will require YVRR to serve a copy of this decision on them so that it is received by them within five days of the service date of this decision and to certify contemporaneously to the Board that it has done so.

Under 49 U.S.C. § 10502(g), we may not use our exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Accordingly, as a condition to granting this exemption, we will impose the employee protective conditions set forth in Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho (Oregon Short Line), 360 I.C.C. 91 (1979).

This proceeding involves a discontinuance of lease operations and overhead trackage rights and not an abandonment. Thus, we need not consider offers of financial assistance (OFAs) to acquire the lines for continued rail service under 49 U.S.C. § 10904 (although the OFA provisions for a subsidy to provide continued rail service do apply to discontinuances), trail use requests under 16 U.S.C. § 1247(d), or requests to negotiate for public use of the lines under 49 U.S.C. § 10905.

Because this is a discontinuance of a lease and trackage rights where the affected lines will continue to be operated, the proceeding is exempt from environmental reporting requirements under 49 C.F.R. § 1105.6(c). Similarly, under 49 C.F.R. § 1105.8(b), the proceeding is exempt from historic reporting requirements. Therefore, this decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

YVRR asks that the Board expedite handling of its petition. YVRR expresses concern that it will start to lose employees in light of the forthcoming discontinuance. To accommodate YVRR's concerns, we are issuing our decision in advance of the 110-day deadline.

It is ordered:

1. Under 49 U.S.C. § 10502, we exempt from the prior approval requirements of 49 U.S.C. § 10903 the discontinuance of YVRR's service on the lines, as described above, subject to the employee protective conditions in Oregon Short Line, 360 I.C.C. 91 (1979).

2. YVRR is directed to serve a copy of this decision on the 23 affected shippers on the lines so that it is received by them within five days after the service date of this decision and to certify contemporaneously to the Board that it has done so.

⁶ Given our market power finding, we need not determine whether the proposed discontinuance is limited in scope.

3. An OFA under 49 C.F.R. § 1152.27(b)(2) to subsidize continued rail service must be received by the railroad and the Board by May 20, 2013, subject to time extensions authorized under 49 C.F.R. § 1152.27(c)(1)(i)(C). Any offeror must comply with 49 U.S.C. § 10904 and 49 C.F.R. § 1152.27(c)(1). Each OFA must be accompanied by the filing fee, which currently is set at \$1,600.

4. OFAs and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: **“Office of Proceedings, AB-OFA.”**

5. Petitions to stay must be filed by May 28, 2013, and petitions to reopen must be filed by June 4, 2013.

6. Provided no OFA to subsidize continued rail service has been received, this exemption will be effective on June 9, 2013.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Mulvey.